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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**MAY 1 - 1991**

Federal Communications Commission  
Office of the Secretary

In re Application of:

UHURU COMMUNICATIONS, INC.

For Renewal of the License of  
Station WUCI-FM,  
91.5 MHz, Channel 218B,  
Binghamton, New York

File No. BRED-910130WF

To: The Commission

DUPLICATE

**PETITION TO DENY**

Richard D. Marks  
Todd D. Gray  
Margaret L. Miller

Attorneys for  
WSKG PUBLIC TELECOMMUNICATIONS COUNCIL

Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Washington, D.C. 20037

(202) 857-2567

May 1, 1991

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	iii
INTRODUCTION.....	1
WSKG HAS STANDING TO FILE THIS PETITION.....	2
ALLEGATIONS OF MATERIAL FACT.....	3
UCI LACKS FINANCIAL QUALIFICATIONS TO REMAIN A LICENSEE.....	9
UCI IS TECHNICALLY UNQUALIFIED TO REMAIN THE LICENSEE OF WUCI.....	11
UCI FAILED ITS DUTY OF CANDOR.....	14
CONCLUSION.....	17
ATTACHMENTS	

### SUMMARY

WSKG Public Telecommunications, Inc. ("WSKG") petitions to deny the license renewal application of Uhuru Communications, Inc. ("UCI") for noncommercial educational station WUCI-FM, Binghamton, New York. WSKG operates public radio and television stations in the central New York area and is concerned about UCI's incapacity to provide public radio service over station WUCI. WSKG has filed a competing application for the WUCI frequency.

Station WUCI has been, by UCI's own admission, off the air since June 1, 1990. UCI's communications to the Commission about its station's status have only reflected WUCI's "temporary" discontinuance of operations for "circumstances beyond our control." However, affidavits and official documents contained in this petition demonstrate that the National Telecommunications and Information Administration ("NTIA"), which provided substantial construction funding for WUCI, seized the station's federally-funded transmission and production equipment in 1990 due to UCI's default under the terms of its grant from that Agency. A report by the Counsel to the Inspector General of the U.S. Department of Commerce shows that UCI was in financial distress, that grant funds were misspent or unaccounted for, and that certain federally-funded equipment was missing. The report also shows a variety of other serious irregularities.

The Broome County Sheriff in 1990 seized and sold other WUCI equipment to satisfy judgments against UCI. At the present time, WUCI has no operable technical facilities at its authorized transmitter site, having been evicted from that site in 1989 due to its failure to make site rental payments. WSKG's efforts to evaluate UCI's current status by locating and reviewing WUCI's public inspection file have been rebuffed.

In these circumstances, UCI lacks financial qualifications to remain the licensee of station WUCI. Although the Commission no longer requires a financial demonstration in renewal applications, UCI's demonstrated record of failure of stewardship and its lack of capacity to re-construct and operate its broadcast facility in the future disqualify it for renewal of the WUCI license.

UCI is also technically unqualified to remain the licensee of station WUCI. It retains little or no transmission or studio equipment and has no available transmitter or studio site. It maintains no office and has been unable or unwilling to produce its public inspection file. It seeks, in essence, to renew a "bare license" in contravention of FCC rules and policies.

Finally, UCI failed its duty of candor to the Commission. It made only a tardy, unedifying statement reflecting a "temporary" cessation of operations without

disclosing the drastic change in circumstances affecting its past and future capacity to operate station WUCI in the public interest. This conduct involves concealment, evasion and failure to be fully informative. It is the basis for finding that UCI lacks the character qualifications to be a Commission licensee. UCI's application, in these circumstances, can only be characterized as a fraudulent renewal attempt.

For these reasons, the WUCI license renewal must be denied or dismissed.

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To: The Commission

PETITION TO DENY

WSKG Public Telecommunications Council ("WSKG"), by its attorneys, petitions to deny the captioned license renewal application for noncommercial educational station WUCI-FM, Binghamton, New York.<sup>1/</sup> The renewal applicant, Uhuru Communications, Inc. ("UCI"), is financially, technically and legally unqualified to remain a broadcast licensee.

INTRODUCTION

This petition is based on affidavits by people with personal knowledge and on other documents of which official notice may be taken, showing facts material to the question of

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<sup>1/</sup> WSKG is also this date filing with the Commission a competing application to construct new noncommercial educational facilities on Channel 218B in Binghamton, New York.

UCI's qualifications to remain a licensee.<sup>2/</sup> These facts demonstrate that UCI has no funds to operate WUCI; that in 1990 the federal agency providing substantial construction funding seized most of the station's equipment, depriving WUCI of the capacity to produce or transmit radio programming; that in 1990 other WUCI equipment, including technical equipment, was levied upon by a commercial creditor, seized and sold off; that UCI failed in its duty to report these significant developments to the Commission; and that UCI now holds, and seeks to renew, only a "bare license," rather than a license for a functioning station. In essence, UCI's renewal application is fraud upon the FCC and the public interest. The renewal application must be denied or dismissed.

**WSKG HAS STANDING TO  
FILE THIS PETITION**

WSKG is the licensee of noncommercial educational stations WSKG-FM and WSKG-TV, Binghamton, New York. WSKG's corporate mission is to bring high quality noncommercial radio and television service to Binghamton and to a large area of

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2/ Under Revised Processing of Broadcast Applications, 72 F.C.C.2d 202 (1979), petitions to deny by competing applicants have at times been dismissed as premature motions to specify issues. However, in the exceptional circumstances presented here, which raise serious disqualifying issues, the Commission should consider the petition at this time. See Columbia Bible College Broadcasting Co., 6 FCC Rcd 516, 516-17 (Audio Services Division 1991). Cf. Seven Locks Broadcasting Co., 94 F.C.C.2d 899, 899-90 (1983) (petition to deny considered in HDO due to allegations concerning potentially disqualifying unauthorized transfer of control).

central New York State. WSKG has a strong interest in assuring that the region's noncommercial broadcast frequencies are used to the maximum practicable extent to serve the people of this area. If a noncommercial radio frequency lies fallow, as is true of WUCI-FM's assigned channel, the Binghamton area is deprived of an important informational and cultural resource. The people of the area and WSKG both are harmed. Moreover, WSKG has itself filed an application for a construction permit for a new station on the WUCI frequency. Consequently, WSKG has standing to file this petition. See In Re Petition for Rule Making to Establish Standards for Determine Standing, 82 F.C.C.2d 89, 95-96 (1980).

#### ALLEGATIONS OF MATERIAL FACT

Attachment 1 is a series of four letters obtained from the FCC's files:

1. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 8, 1990; informing the FCC that WUCI-FM has "temporarily discontinued operations as of June 1, 1990." The reason for the discontinuance is given merely as "circumstances beyond our control."<sup>3/</sup>
2. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 22, 1990, referring to the letter of June 8, 1990; informing the FCC that, "we expect to be off the air for over 30 days"; and

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<sup>3/</sup> Despite a diligent search of the FCC's files on several occasions between June 1, 1990 and March 26, 1991, counsel for WSKG was unable to locate the June 8, 1990 or June 22, 1990 letters or confirm that they were, in fact, filed as alleged by UCI. The letters as reflected in Attachment 1 were attached to the McCombs letter of March 26, 1991 and filed with the Commission at that time.



requesting Special Temporary Authority to remain silent.

3. Letter, Harold K. McCombs, Jr. to Secretary, FCC, dated March 26, 1991, referring to the June 8 and 22, 1990 letters; notifying the Commission that no authorization was ever received; and requesting "an STA to remain off the air."
4. Letter, Chief, FM Branch, Audio Services Division, FCC, to Uhuru Communications, Inc. c/o Harold K. McCombs, Jr., dated April 2, 1991, granting special temporary authorization for WUCI to remain silent.

The important point for purposes of this petition is that none of the licensee's three notifications to the FCC alludes in any way to the licensee's financial difficulties. No mention is made of WUCI's lack of a studio and offices or dispossession of essential radio broadcasting equipment. The Commission may take official notice of these letters.

Attachment 2 is a copy of the January 30, 1991 WUCI license renewal application, as retrieved from the FCC's files. The application also does not mention that UCI has no facilities or personnel with which to operate station WUCI, or even acknowledge that the station is off the air. Indeed, the application provides no hint that the WUCI renewal request raises concerns beyond the issues routinely considered in the license renewal context.

Attachment 3 is a Declaration of Charles F. Mulvey, WSKG's Vice President for Engineering. In paragraphs 2 through 4, Mr. Mulvey states that WSKG and the National Telecommunications and Information Administration ("NTIA"), U.S.

Department of Commerce, are parties to a written agreement under which WSKG stores certain federally-funded radio equipment repossessed by NTIA from station WUCI. A copy of the agreement is attached to Mr. Mulvey's Declaration.<sup>4/</sup> The agreement with NTIA includes, in "Exhibit A," an inventory of the items seized from WUCI by NTIA. This inventory includes, among other things, studio equipment, an FM transmitter, Emergency Broadcast System equipment and two studio-transmitter links transmitters.

In paragraph 5, Mr. Mulvey describes a visit he made on April 18, 1991 to WUCI's last known transmitting site, the Motorola tower on Ingraham Hill in Binghamton. He observed that the electrical power is disconnected to WUCI's equipment shed. Paragraph 6 describes a letter Mr. Mulvey received from Gino Ricciardelli, Vice President, Engineering, of Stainless Broadcasting Company, which also has a tower on Ingraham Hill. (The Stainless tower is WUCI's authorized transmitter site.) Mr. Ricciardelli notes that WUCI, unable to pay back rent or make rent payments in the future, vacated the Stainless tower and removed the WUCI transmitter and shack from Stainless' property in the spring of 1989.

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<sup>4/</sup> During late 1990, at NTIA's suggestion, WSKG entered negotiations with UCI over the possible acquisition, subject to appropriate FCC approval, of the WUCI license. These efforts by WSKG to resurrect service over the station were unsuccessful. WSKG is therefore filing its own application for a new construction permit for the WUCI frequency.

In paragraphs 7 through 9, Mr. Mulvey describes his efforts to review WUCI's public inspection file. Mr. Mulvey telephoned and visited Ms. Billie Anderson, who rebuffed his request to see the file. Among other things, Ms. Anderson told Mr. Mulvey that she did not have to show him the file, and told him that she had seven days in which to produce the file (paragraph 8). (The Commission can take official notice from its records that Ms. Anderson was listed as a director of the licensee corporation on FCC Form 340, filed with the FCC in December, 1982; indeed, she is listed as one of the corporation's initial directors on page 2 of UCI's Certificate of Incorporation, dated August 7, 1982 and filed with FCC Form 340.)

Attachment 4 is the Declaration of Mark Polovick, Chief Engineer at WSKG-TV/FM. Mr. Polovick describes his efforts, and those of fellow employee Roger Sporre, to locate and inspect WUCI's public file. Mr. Polovick describes how he was referred to Ms. Billie Anderson, who was described to him as the only person who would know where the file was kept. The remainder of the Declaration describes Mr. Polovick's unsuccessful efforts to inspect WUCI's public file. Mr. Polovick's Declaration corroborates Mr. Mulvey's in certain important particulars.

Attachment 5 is the Declaration of Scott Anglehart, an attorney with the law firm of Twining, Nemia, Hill & Steflik in Binghamton. Mr. Anglehart describes how, under the Freedom of Information Act, he requested access to a final investigative

report involving a principal of UCI, Mr. Ashimba A. Tariq.<sup>5/</sup> Attached to Mr. Anglehart's declaration is a letter from the Counsel to the Inspector General of the U.S. Department of Commerce, enclosing a redacted copy of the report, together with information about the reasons for the deletion of certain items from the report.

The subject of the report is "Program Fraud" in connection with NTIA's grant to UCI of \$55,138 for purchase of specified broadcast equipment to be used for construction of WUCI. In summary, the report explains that UCI was in financial distress, that not all of the of the grant funds could be accounted for and that certain equipment was missing at the time of the investigation in 1988.

The memorandum and the attached abstract of investigation also reveal, among other things:

1. The UCI board president had sole authority over WUCI's operation. While Mr. Tariq was president, "the board membership changed several times." Memorandum at 4, para. 11.
2. That a new board of directors had taken over the station in 1987. The new board "knew little or nothing about the equipment or the financial status of WUCI," and so was unable to provide documentation of equipment purchases that NTIA requested. Memorandum at 4, para. 13.

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<sup>5/</sup> Because Mr. Anglehart's declaration, and the one that follows in Attachment 6, reveal only facts that third parties already know or could learn, neither declaration waives the attorney-client privilege as to private communications with WSKG. See, e.g., U.S. v. Buljubasic, 808 F.2d 1260 (7th Cir.), cert. denied, 484 U.S. 815 (1987).

3. The licensee board had no effective power over the president, Mr. Tariq. Abstract at 10, para. 2.
4. A check of records at the National Crime Information Center revealed: "TARIQ has an extensive criminal background with charges and convictions ranging from petty theft and forgery, to kidnapping, armed robbery and possession of narcotics.<sup>6/</sup> Since his parole from Attica Correctional Facility on February 21, 1979, where he was serving a 10 year sentence for armed robbery, he has been charged and convicted of petty larceny, possession of narcotics, and criminal possession of a weapon. He [was] serving a two to six year sentence. . .after pleading guilty to weapons and narcotics charges." Abstract at 12.
5. The station was evicted from its previous tower site. Abstract at 25.
6. Stainless Leasing Company, which previously leased the tower site for WUCI, was owed \$19,000. Abstract at 25.

The foregoing is illustrative, not exhaustive.<sup>7/</sup>

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6/ For an understanding of the significance of this aspect of the report of investigation, see Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988, 5 FCC Rcd 4500 (1990); South Carolina Radio Fellowship, FCC 91D-2 (ALJ January 18, 1991) (failure to disclose felony drug trafficking conviction of licensee corporation's president, who was also a director, held an "egregious" non-FCC offense under the Commission's Public Notice, 4 FCC Rcd 7533 (1989), slip op. at 5; a violation of Section 1.65 of the Rules, as a deliberate withholding of information to avoid an inquiry into matters that the licensee knew would potentially have an impact on its licensee qualifications, slip op. at 6; and a lack of candor, id.).

7/ Much of the information in the Memorandum and Abstract obviously is relevant to any determination of UCI's qualifications to be a broadcast licensee, and would form the basis for the Commission's designation of hearing issues on UCI's basic and comparative qualifications as a renewal applicant. However, WSKG's petition to deny does not rely on the Memorandum and Abstract except to support the propositions that UCI is

(continued...)

Attachment 6 is a further Declaration of Scott Anglehart, this attesting to the receipt from the Records Access Officer of Broome County, N.Y., of records of the Broome County Sheriff's 1990 seizure and sale of particular UCI equipment, including technical equipment, to satisfy judgments entered against UCI.

**UCI LACKS FINANCIAL QUALIFICATIONS  
TO REMAIN A LICENSEE**

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A licensee must remain financially qualified to maintain its facilities and operate its station. If a licensee convincingly demonstrates an inability to raise sufficient money to maintain and operate its station, it lacks the necessary financial qualifications to be granted renewal.

Applicants for new aural broadcast facilities must "demonstrate the ability to construct the station and operate the facility for three months, without relying upon advertising or other revenue to meet these costs." Financial Qualifications Standards for Aural Broadcast Applicants, 69 F.C.C.2d 407 (1978); see, e.g., Anchor Broadcasting Ltd. Partnership, 5 FCC Rcd 2432 (1990).

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7/ (...continued)  
financially unqualified (because it lacks funds to re-construct and operate WUCI), is technically unqualified (because it does not possess the equipment or the transmitter site necessary to operate WUCI) and lacks candor because it failed to report such obviously material changes to the Commission, as required by FCC rules.

A similar standard governs renewal applications. In Federal Broadcasting System, 62 F.C.C.2d 861 (Rev. Bd. 1977), dismissed, 75 F.C.C.2d 615 (1980) (proceeding terminated after death of principal), the Review Board, on its own motion, designated a financial issue because repeated requests for authority to remain silent raised serious questions about whether the renewal applicant would regain the financial capacity to operate the station. Id. at 874-75.

In Revision of Form 303, Application for Renewal of Broadcasting Station License, 59 F.C.C.2d 750 (1976), the Commission eliminated requirements for commercial and noncommercial renewal applicants to demonstrate their continued financial qualifications. Id. at 756 & n.4. However, the Commission did not eliminate the requirement that renewal applicants be financially qualified. The Commission said:

The licensee's proven ability to maintain the broadcast operation of that station over a period of time affords the Commission reasonable assurance of the renewal applicant's financial qualifications. . . . Serious financial problems arising during the preceding license period term and persisting at renewal time have generally been resolved with the licensee, prompted by economic realities, refinancing its broadcast operation or, with Commission approval, assigning the station license to another who was fully able to sustain the station's continued operation. . . . The Commission will, of course, fully explore the financial posture of any broadcast licensee in the unlikely event that its past stewardship is insufficient to support the likelihood of continued station operation. Accordingly, we reaffirm our belief that prolonged suspension of station operation disserves the public interest and we stand committed to the expeditious restoration of broadcast service to the public.

Id. at 756-57 (footnotes omitted, emphasis supplied).

This very issue is raised here. The licensee has made a request to remain silent. Further, much of the licensee's transmitting and studio equipment has been seized by a judgment creditor and by the federal agency that paid for a substantial amount of the equipment in the first place. The licensee has vacated both its original and a subsequent transmitter site,<sup>8/</sup> and appears at present not to have a transmitter site. The Department of Commerce investigation revealed that UCI was deeply in debt, with no obvious means to alleviate its financial distress.

These facts raise a material question of whether UCI is, under Commission precedent, financially qualified to merit renewal of the license for WUCI.

UCI IS TECHNICALLY UNQUALIFIED  
TO REMAIN THE LICENSEE OF WUCI

"[A]n applicant is required to show that the essential items of equipment are either possessed or reasonably available at a cost which would not impair its financial qualifications." United Broadcasting Company, 93 F.C.C.2d 482, 508 (1983). WUCI's technical equipment was seized in 1990. It has no studio and

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<sup>8/</sup> WSKG finds no record in the Commission's files that UCI sought or received permission to change transmitter sites from the Stainless tower to the Motorola tower at Ingraham Hill. An application seeking approval for the WUCI relocation (File No. BPED-890615IA) was filed but later dismissed by the Commission on September 14, 1990.



very little, if any, remaining studio equipment. Its transmitter and studio-transmitter links, among other items, were taken. The electrical power to its transmitter shack is disconnected.

In United Broadcasting Company, 93 F.C.C.2d 482 (1983), the Commission found an applicant technically unqualified. The used equipment proposed in its application was no longer available and no substitute equipment was specified. The Commission concluded, as did the ALJ, that the applicant lacked the requisite technical qualifications to be a licensee. Id. at 508-09.

In Sierra Broadcasting, Inc., 64 F.C.C.2d 726 (1977), the Commission denied reconsideration of its earlier dismissal of the license renewal application for a television station in Visalia, California. The station was silent and appeared unable "to return to the air at any time in the near future." Id.<sup>9/</sup> The station's former studio was then occupied by a machine shop, with no broadcast equipment remaining there, and the transmitter site had no remaining transmitter facilities and no structure available for the installation, although a tower remained.

The Commission held:

We are offered no substantial basis on which to conclude that termination of authorized broadcast operations. . . -- and the abandonment of main studios shortly thereafter -- was ever intended to be anything

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<sup>9/</sup> Although the station submitted a series of requests to remain silent, the Commission noted that mere submission is insufficient; authorization from the Commission is required for compliance with minimum operating standards.

but permanent. The public interest is disserved by allowing broadcast channels to remain unused for such lengthy periods.

Id. at 727 (citation omitted).

In UCI's case, the seizure of its technical equipment and the attendant economic distress make the licensee's intent irrelevant. As explained in Marr Broadcasting Company, 1 FCC Rcd 691 (ALJ 1986), joint petitions dismissed, 2 FCC Rcd 3466 (Rev. Bd. 1987), 2 FCC Rcd 6596 (1987), joint petition approved upon renewal applicant's dismissal of application, 3 FCC Rcd 562 (Rev. Bd. 1988):

[I]n a very real sense, a licensee "runs on its record. . . ." When that record is in conflict with the public interest, however, a heavy burden rests on the renewal applicant to show that renewal of its license would be in the public interest. . . .

. . . .

The seriousness of Marr's failure to broadcast cannot be understated. As the Commission itself has stated, the "prolonged suspension of station operation disserves the public interest. . . ."

While Marr attributed its going off the air to "decreasing revenues" and "economic problems," financial difficulties do not excuse a licensee from fulfilling its obligations to operate in the public interest.

Id. at 711 (citations omitted).

UCI has no technical facilities to carry out its licensee obligations to provide broadcast service responsive to community problems, needs and interests. Its record offers no hope that UCI can re-construct the necessary facilities. Therefore, UCI fails to meet the minimal technical qualifications

to remain a licensee. Since June 1, 1990 to the present, UCI has not served the public interest because WUCI cannot broadcast.

UCI FAILED ITS DUTY OF CANDOR

UCI's letters in Attachment 1 and its renewal application in Attachment 2 fail to mention WUCI's dire economic circumstances, the seizures of its equipment and its lack of studio and transmitting facilities. The letters refer only to "circumstances beyond our control." The renewal application, in Exhibit 1, actually asserts that UCI "currently operates" with an all volunteer staff. (See Attachment 2.) Further, investigation of the appropriate FCC public files reveals no other communication from UCI to apprise the Commission of the licensee's drastic change in circumstances.

A licensee's obligation of candor in renewal proceedings was recently summarized in Henry R. Malloy, Jr., FCC 91D-17, MM Docket No. 88-306 (ALJ Apr. 24, 1991):

The Commission's "scheme of regulation rests on the assumption that applicants will supply the Commission with accurate information" and that "[d]ishonest practices threaten the integrity of the licensing process. . . ." Absolute truth and candor is a basic duty of applicants. The Commission views "misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust." Such misconduct has consistently disqualified applicants.

Slip Op. at 5 (citations omitted). The licensee represented in its renewal application that it had complied with the Rules, when it had not. Id.

In Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1196 (1986), the Commission explained: "We have recently observed that misrepresentation 'involves false statements of fact,' while lack of candor 'involves concealment, evasion, and other failures to be fully informative.'" In Fox River Broadcasting, Inc., 88 F.C.C.2d 1132 (Rev. Bd. 1982), modified, 93 F.C.C.2d 127, 129 (1983) (lack of candor requires deceptive intent), lack of candor was described in these terms:

Lack of candor, unlike misrepresentation, does not arise directly out of the more universal requirement that intentionally false statements not be made in connection with an application or adjudicatory proceeding before any federal agency. It arises, rather, out of the "special status of licensees as trustees of a scarce public resource," . . . and the courts have suggested that "the FCC would be derelict if did not hold broadcasters to 'high standards of punctilio.' . . ." [This] translated into the creed that: "[i]t does not seem too much to ask that federal licensees be scrupulous in providing complete and meaningful information provided for in forms and regulations." . . . (emphasis added). Thus, in proceedings before the Commission involving a licensee. . . , misleading conduct which does not necessarily amount to a misrepresentation . . . may nonetheless warrant a penalty for breach of the standard of complete candor expected by the Commission, which must rely heavily on such candor to provide validity to processes on which the reliance is based. Lack of candor can be characterized in a number of ways: evasiveness, failure to provide "complete and meaningful information," "skirting" a question by providing information "'technically' correct" but unedifying, or the playing of "procedural games." The core of candor, then, is omission, viz., failure to be completely forthcoming in the provision of information which could illuminate a decisional matter.

Id. at 1136-37 (citations and footnotes omitted, emphasis in original.)

UCI's loss of its financial and technical facilities -  
- certainly of decisional significance in any broadcast license renewal -- was never communicated, even indirectly, to the Commission in its requests for STA or its renewal application. UCI failed to provide complete and meaningful information. Instead, it supplied an "unedifying" reason for going and remaining silent.

UCI's failure to disclose its plight to the Commission calls to mind George E. Cameron Jr. Communications, 93 F.C.C.2d 789 (Rev. Bd. 1983):

The ALJ considered the evidence and concluded that GECC's financial showing to the Commission "was essentially a sham"; that during the relevant period "BBC and its subsidiary GECC were on the verge of financial collapse"; and, that it violated 47 CFR §1.65 for failure to advise before the grant of the FM application that its financial picture had changed in a decisionally significant manner. The Board considered GECC's exceptions and found that even if the original balance sheet submitted by BBC was "technically accurate," GECC misled the Commission by failing to notify it of a sharply declining economic position and of a deep financial rupture in the GECC organization.

Id. at 804. The Board concluded:

We find that there was acute awareness on the part of the GECC principals of the gravity of the financial situation and that its breach of its duty to so inform the Commission during the pendency of the FM application was egregious. . . .GECC's lack of candor here is independently sufficient for disqualification.

Id. at 812 (citations and footnote omitted). This analysis, albeit in the renewal context, is directly applicable to UCI's

conduct. In essence, UCI concealed its loss of financial and technical qualifications.<sup>10/</sup> Thus, the facts demonstrate substantial and material questions of fact raising the prima facie question of whether UCI must be disqualified as a licensee, and its renewal application denied or dismissed.

### CONCLUSION

Sections 309(d)(1) and (2) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1) & (2), dictate the standards of sufficiency for a petition to deny UCI's license renewal application. First the petitioner must demonstrate by specific allegations of fact that grant of the application would be prima facie inconsistent with the public interest, convenience and necessity. See Astroline Communications Co. v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988). Second, the entire record, consisting of the application, pleadings, affidavits, and other matters of which the Commission may take official notice, must demonstrate that substantial and material questions of fact warrant further inquiry. Id. at 1561.

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<sup>10/</sup> The facts alleged in the declarations of Messrs. Mulvey and Polovick regarding attempts to view WUCI's public inspection file are supplied, not to establish a violation of the public file rule, but to demonstrate that WUCI has no presence in Binghamton, its city of license. The unwillingness or inability -- it matters not which -- of Ms. Anderson, a director of the licensee corporation, to supply access to the public inspection file shows, in context of the other facts alleged, that WUCI no longer exists, except as an abstraction.

The specific allegations of fact supplied by WSKG satisfy this standard. They raise prima facie questions about whether UCI is financially and technically qualified to remain a licensee. They also raise the prima facie question of whether UCI must be disqualified as a licensee because of its lack of candor before the Commission.

Unless UCI can, in opposition, proffer facts to demonstrate its financial and technical qualifications and dispel the allegations concerning its apparent lack of candor, the license for WUCI cannot be renewed without a hearing. See In re License Renewal Applications, 5 FCC Rcd 3847 (1990) (citing the two-step analysis required under Astroline). Further, WSKG is confident that a hearing, if held, would prove that WUCI no longer exists, and that UCI's application presents a case of fraudulent renewal.

Respectfully submitted,

WSKG PUBLIC TELECOMMUNICATIONS  
COUNCIL

By: Todd D. Gray  
Richard D. Marks  
Todd D. Gray  
Margaret L. Miller

Its Attorneys

Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Washington, D.C. 20037  
(202) 857-2567

May 1, 1991

**ATTACHMENT 1**

1. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 8, 1990.
2. Letter, Dr. Martin Schulman to Secretary, FCC, dated June 22, 1990.
3. Letter, Harold K. McCombs, Jr. to Secretary, FCC, dated March 26, 1991.
4. Letter, Chief, FM Branch, Audio Services Division, FCC, to Uhuru Communications, Inc. c/o Harold K. McCombs, Jr., dated April 2, 1991.



# Binghamton

State University of New York at Binghamton  
P.O. Box 6000, Binghamton, New York 13902-6000

MBA/Arts Program\*  
School of Management  
Telephone (607) 777-2630  
FAX (607) 777-4422

# COPY

June 8, 1990

Secretary  
Federal Communications Commission  
Washington, DC 20554

Dear Sir or Madam:

I am writing in my capacity as the volunteer Interim President of the Board of Directors of Uhuru Communications, operators of **WUCI-FM**, a not-for-profit radio station [501(c)3] in Binghamton, New York. We wish to inform you, in conformance with Section 73.1740 A4, that due to circumstances beyond our control we have temporarily discontinued operations as of June 1, 1990.

Very truly yours,



Dr. Martin Schulman, Associate Professor  
Director, MBA in Arts Administration Program

\*Master of Business Administration with a specialization in Arts Administration